



**NYSERDA**

**Tier 1 Large-Scale Renewables Program  
Request for Proposals RESRFP23-1  
RFP Release Date: November 30, 2023**

**Policy Regarding Tier 1 REC Agreement Termination, Contract Security and Eligibility to Submit Proposals into RESRFP23-1 and RESRFP24-1**

NYSERDA's current policy regarding Tier 1 REC agreement termination, contract security and eligibility to submit proposals into RESRFP23-1 and RESRFP24-1 is described below. **Please note, the policy described herein is based on special and unique current circumstances and is not expected to apply to future solicitations.**

Eligibility and Timing of Termination. To be eligible to submit a proposal in RESRFP23-1 or RESRFP24-1, a proposer cannot have an active agreement with NYSERDA or another entity with respect to the Tier-1 RECs being offered in that solicitation at the time of submission of the Step One Eligibility Application.

For Bid Facilities that utilize the mutual termination agreement form prepared by NYSERDA described below, the Bid Facility will satisfy this eligibility criteria if (i) the mutual termination agreement form provided by NYSERDA is signed by the Seller and submitted to NYSERDA prior to submission of the Step One Eligibility Application and the only remaining condition to effectiveness is execution by NYSERDA and delivery by Seller of a replacement letter of credit and (ii) the replacement letter of credit is delivered by the Seller to NYSERDA prior to submission of the Step Two Bid Proposal.

Mutual Termination Agreement. NYSERDA has prepared a [form of mutual termination agreement](#) that can be utilized by eligible Sellers with a Tier-1 REC agreement in place with NYSERDA (an "Existing NYSERDA Agreement") that elect to submit proposals into RESRFP23-1 or, if ineligible for RESRFP23-1, into RESRFP24-1 (if eligible).

Only Sellers that have **not** yet issued a notice to proceed for the Bid Facility and have concluded that the Bid Facility is not economically feasible under the pricing agreed to and set forth in the Existing NYSERDA Agreement are eligible to enter into the mutual termination agreement.

For this purpose, notice to proceed is defined as a notice from Seller to its general contractor (or in the event that there is no general contractor to all material internal construction unit(s) and/or third party contractor(s)) to proceed with the construction of the Bid Facility, at a minimum of eighty percent (80%) of the Bid Capacity, other than a limited notice to proceed only with site preparation and/or site civil work.

[This Mutual Termination Agreement is available here](#) and includes the following key terms:

1. The contract security provided pursuant to the Existing NYSERDA Agreement (the “Posted Contract Security”) will temporarily **not** be drawn by NYSERDA pending the outcome of RESRFP23-1.
2. If the same Bid Facility that was subject to the terminated Existing NYSERDA Agreement is awarded in RESRFP23-1, the Posted Contract Security will be **added** to the amount of contract security required to be posted in connection with the RESRFP23-1 award and will be drawable in accordance with the same terms and conditions that apply to such award (including the resulting Tier-1 REC agreement).
3. If the Bid Facility that was the subject of the terminated Existing NYSERDA Agreement is eligible for RESRFP23-1 but no proposal is submitted for the Bid Facility, or if a proposal for the Bid Facility is submitted into RESRFP23-1 but is not awarded, NYSERDA reserves the right to draw on the Posted Contract Security at that time.
4. Only if the Bid Facility that was the subject of the terminated Existing NYSERDA Agreement is **ineligible for RESRFP23-1** (and provides reasonably satisfactory evidence to NYSERDA of such ineligibility by the RESRFP23-1 Step Two Bid Proposal submission deadline), the terms described above will apply to such Bid Facility for RESRFP24-1.

To ensure that any terminations of Existing NYSERDA Agreements can be processed prior to the deadline for submission of Step One Eligibility Applications to RESRFP23-1, Sellers that wish to proceed with mutual termination are requested to execute the Mutual Termination Agreement and submit it to NYSERDA no later than **Thursday, December 14, 2023**.